IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16255 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIPAKBHAI MANILAL PATEL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT THRO. SECRETARY & 1 - Respondent(s)

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Appearance :
MR JC VYAS for Petitioner(s) : 1 - 2.
MR MR MENGDEY, AGP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 04/08/2006

ORAL JUDGMENT

1. Rule. Mr. Mengdey, learned AGP waives service of rule for respondent Nos. 1 & 2 and with the consent of the learned advocate appearing for

both the sides, the matter is further heard today.

2. The only question, which arise for consideration of this Court is whether the action of the Mamlatdar denying entry of a registered document for lis pendens is legal and valid or not?

3. The short facts of the case are that as per the petitioners, they have filed Special Civil Suit No. 209/05 in the Court of learned Civil Judge(SD), Ahmedabad, for the specific performance of the contract and as per the petitioners, the said suit is pending and therefore, the notice of lis pendens was got registered by the petitioners as per the document(Annexure-B), which has been registered vide registration No. 5302 dated 20th June, 2006, of the Joint Sub-Registrar, SRO, Ahmedabad-2, Vadaj. After the document was registered, the petitioners submitted application to the Mamlatdar, Dascroi for entering of the said document. However, Mamlatdar, as per the communication dated 19.07.2006, informed to the petitioners that as per the provisions of Section 18 of the Transfer of Properties Act, there is no provision for registration of lis pendens and therefore, the application of the petitioners cannot be accepted. It is under these circumstances, the petitioners have approached to this Court.

4. Whenever, the Suit pertaining to immovable property is filed, the provisions of Section 52 of the Transfer of Properties Act are applicable on the principles of *lis pendens* in normal circumstances. However, so far as Gujarat State is concerned, there is amendment by Bombay Act No. 14 of 1939 read with Act No. 57 of 1959, whereby, the notice of pendency of Suit or the proceedings are required to be registered. Section 52 of the Act read with amendment Act No. IV of 1882 for Gujarat State and Maharashtra reads as under :

> *"**52. Transfer of property suit relating thereto**-*
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> *During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit of proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."*
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> **"STATE AMENDMENTS**
>
> *Whole of Gujarat and Maharashtra*
>
> *Amendment of Section 52 of Act IV of 1882.- Section 52 of the Transfer of Property Act, 1882 shall be renumbered as sub-section (1) of Section 52 of the said Act, and*

(i)In sub-section (1) so renumbered after the word "question" the words and figures "if a notice of the pendency of such suit or proceedings is registered under Section 18 of the Indian Registration Act, 1908", and after the word "property" where it occurs for the second time, the words "after the notice is so registered", shall be inserted; and

(ii)after the said sub-section(1) so renumbered the following shall be inserted, namely:
"(2) Every notice of pendency of a suit or proceeding referred to in sub-section(1) shall contain the following particulars, namely:
(a) the name and address of the owner of immovable property or other person whose right to the immovable property is in question;

(b) the description of the immovable property, the right to which is in question.

(c) the court in which the suit or proceeding is pending;

(d) the nature and title of the suit or proceedings; and

(e) the date on which the suit or proceeding was instituted."(Bombay Act 14 of 1939, S.3)"

5. If the provisions of Section 52 read with aforesaid amendment for Gujarat State are considered, the principles of lis pendens would apply to a transaction if entered after institution of Suit only, if such notice of lis pendens is registered under the Indian Registration Act, 1908 and as per the provisions

of the amendment, the notice of pendency of the suit should contain the details as per sub-section 2 of the amendment in Section 52, which is applicable to the Gujarat State. The essential purpose of the aforesaid amendment is to see that any person who may be interested to purchase the property when undertakes the title search of the property with the sub-registrar, the person concerned would be put to notice that a particular suit is pending before the competent Court and therefore, he may not be misguided or if with conscious knowledge, the person concerned has purchased the property, the purchaser may not be in a position to contend that he was not aware about the pendency of the litigation and consequently, the Suit may not be frustrated or the principles of lis pendens can have its full effect as per the provisions of Transfer of Properties Act.

6. Therefore, it appears that the stand of the Mamlatdar that such documents is not as per the provisions of the Transfer of the Properties Act is not correct and once a registered document is there, pertaining to the property in question, it is required for the Mamlatdar to enter the same in the revenue record of the Government. Of course, after undertaking the procedure, as may be required under the Bombay Land Revenue Code or other relevant law of giving notice to the affected party and thereafter to mutate the

entry.

7. In view of the aforesaid, the order dated 19.07.2006 passed by Mamlatdar(Annexure-C) is quashed and set aside with the direction that Mamlatdar shall treat the document as valid as per the provisions of the Transfer of Properties Act read with the provisions of India Registration Act and shall further proceed in accordance with law for entering the same in the relevant record after undergoing the procedure as required under the Bombay Land Revenue Code read with the provisions of Gujarat Land Revenue Rules.

8. It is made clear that by the aforesaid direction, no additional right shall be read be read as created in favour of either parties to the proceedings of Civil Suit No. 209/05 and all rights and contentions of both the sides in the suit shall remain open and at the time when the entry is to be mutated based on the documents of lis pendens, both the sides shall be at the liberty to raise all contentions as may available in law.

9. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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